IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WA.No. 2807 of 2007

AGAINST THE JUDGEMENT IN WPC.33757/2007 Dated 15/11/2007
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APPELLANT/PETITIONER:

M/S.WELLWORTH ENGINEERS & POLYMERS,
B-7 INDUSTRIAL ESTATE,
ETTUMANOOR,
KOTTAYAM, REPRESENTED BY MANAGING PARTNER
JACOB J.MAPPILACHERRY.

BY ADVS. SRI.VIJAYAN. K.U.
& SRI.K.N.SREEKUMARAN

RESPONDENTS/RESPONDENTS:
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1. ASST.COMMISSIONER (KGST)-I,
SPECIAL CIRCLE, COMMERCIAL TAXES,
KOTTAYAM, PIN - 686 002.

2. DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOLLAM.
PIN - 691 013.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL TAXES, KOTTAYAM,
PIN - 686 002.

4. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SRI VINOD CHANDRAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K. M. JOSEPH, J.

W. A. NO. 2807 OF 2007

Dated this the 27th November, 2007

JUDGMENT

H.L. DATTU, CJ.

Questing the correctness or otherwise of the order passed by the learned Single Judge in W.P.(C). No. 33757/07 dated 15.11.2007, petitioner in the Writ Petition has presented this Writ Appeal.

2. Appellant/petitioner, aggrieved by the orders of assessment passed by the Assessing Authority for the assessment year 2006 - 2007 and for the months of April and May, 2007, has filed Appeals before the First Appellate Authority. Along with the Appeals, applications for stay is also filed.

3. The ground raised in the stay applications is as under:

> *"The appellant firm is served with Revenue Recovery notice to remit the tax all on a sudden which it find very difficult due to funds shortage. The appellant applies for stay of recovery of tax. The prayer is to grant complete stay till the disposal of Appeal."*

4. The first Appellate Authority while considering the application for grant of stay, in his order dated 15.10.2007 has observed as under:

> *"Shri P.J. Joseph, Sales Tax Practitioner appeared and argued the stay petition. He argued that the appellant has no* ***immediate source to raise the amount.*** *He had made out a prima facie case for conditional stay. In the circumstances, the following orders are issued:* ***(emphasis supplied by us).***

Order No.STA. 678/2007 dated 15.10.2007.

> *Steps for collection of balance tax due for the period 5/07 are stayed till the disposal of appeal subject to the condition that the appellant pays 50% of the balance tax within two weeks from the date of receipt of this order. The appellant should also furnish adequate security for the balance amount to the satisfaction of the assessing authority. If any of the condition is not fulfilled, stay granted will automatically vacate."*

5. Aggrieved by the said order passed by the First Appellate Authority, the petitioner has presented the writ petition. The learned Single Judge by the impugned order has rejected the writ petition.

6. Learned counsel appearing for the appellant/petitioner, submits that the first Appellate Authority without proper application of mind to the stay petitions filed by the assessee, has mechanically passed the impugned orders and, therefore, a request was made to set aside those orders and further to direct the First Appellate Authority to grant unconditional stay of the orders of assessment passed and the demand notice issued pursuant thereto, without insisting upon the petitioner to pay the amounts due under the Act for the aforesaid assessment years in question.

7. The learned Single Judge taking into consideration the grounds raised in the stay petition has come to the conclusion that the first Appellate Authority is justified in passing the impugned order, accordingly has rejected the writ petition. Aggrieved by the said order, the appellant is before us in this Writ Appeal.

8. Learned counsel for the appellant reiterates the contentions raised before the learned Single Judge. We have carefully perused the application filed by the appellant for grant of stay. The only grievance that was raised by the petitioner in the application for stay is that, the petitioner is finding it very difficult due to funds

shortage to pay the amounts due under the Act, as quantified by the Assessing Authority. Apart from that, there is no other ground raised in the stay petition.

9. The first Appellate Authority after adverting to the contentions raised has passed the conditional interim order.

10. Since the petitioner has raised only one contention and since that it is considered and answered by the First Appellate Authority, it cannot be said that the First Appellate Authority has mechanically proceeded to pass the conditional interim order. In that view of the matter, we are of the opinion that the learned Single Judge is justified in rejecting the writ petition. While agreeing with the findings of the learned Judge, we reject the Writ Appeal.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

kbk/DK.